

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 13-143V

(Not to be published)

KALLIE ANN SCHMIDT, *Mother of*
HAYLEE MARIE MALLONEE, *deceased*,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*
*
*
*

Filed: July 10, 2015

Decision by Stipulation; Damages;
Hepatitis B Vaccine; Anaphylactic
Reaction

Douglas Lee Burdette, Burkett & Burdette, Seattle, WA, for Petitioner.

Glenn MacLeod, U.S. Dep't of Justice, Washington, DC, for Respondent

DECISION AWARDING DAMAGES¹

On February 26, 2013, Petitioner Kallie Ann Schmidt filed a petition as mother of Haylee Marie Mallonee, deceased, seeking compensation under the National Vaccine Injury Compensation Program, ("the Vaccine Program").² Petitioner alleges that her daughter's death resulted from an anaphylactic reaction to receipt of the Hepatitis B Vaccine.

¹ Because this decision contains a reasoned explanation for my action in this case, I will post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the posted decision's inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the whole decision will be available to the public. (*Id.*)

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

Respondent denies that the Hepatitis B Vaccine caused Petitioner's daughter to suffer anaphylaxis or any other injury and further denies that her death was a sequela of a vaccine-related injury. Nonetheless both parties, while maintaining their above-stated positions, agreed in a stipulation filed July 6, 2015, that the issues before them can be settled and that a decision should be entered awarding Petitioner compensation.

I have reviewed the file, and based upon that review, I conclude that the parties' stipulation is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

A lump sum of \$30,000.00, in the form of a check payable to petitioner, as Legal Representative of the Estate of Haylee Marie Mallonee. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

Stipulation ¶ 8.

I approve a Vaccine Program award in the requested amount set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by jointly filing notice renouncing their right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KALLIE ANN SCHMIDT, Mother of
HAYLEE MARIE MALLONEE, deceased,

Petitioner,

v.

**SECRETARY OF HEALTH
AND HUMAN SERVICES**,

Respondent.

*

*

*

*

*

*

*

*

*

*

*

*

*

No. 13-143V (ECF)

SPECIAL MASTER

BRIAN H. CORCORAN

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner filed a petition for vaccine compensation on behalf of her deceased daughter, Haylee Marie Mallonee ("Haylee"), under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Haylee's receipt of Hepatitis B ("Hep B") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Haylee received the Hep B vaccine on or about May 9, 2012.
3. The vaccine was administered within the United States.
4. Petitioner claims that Haylee's death on May 10, 2012, resulted from anaphylactic reaction to her Hep B vaccination received on May 9, 2012.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Haylee's behalf as a result of her alleged injury and death.

6. Respondent denies that the Hep B vaccine caused Haylee to suffer anaphylaxis or any other injury and further denies that Haylee's death on May 10, 2012, was a sequela of a vaccine-related injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$30,000.00 in the form of a check payable to petitioner, as Legal Representative of the Estate of Haylee Marie Mallonee, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a prepaid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of Haylee Marie Mallonee's estate under the laws of the State of Washington. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal representative of Haylee's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Haylee Marie Mallonee at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of Haylee Marie Mallonee upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and as Legal Representative of the Estate of Haylee Marie Mallonee, deceased, and on behalf of Haylee's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the United States Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Haylee resulting

from, or alleged to have resulted from, the Hep B vaccination administered on or about May 9, 2012, as alleged by petitioner in a petition for vaccine compensation filed on or about February 26, 2013, in the United States Court of Federal Claims as petition No. 13-143V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages.

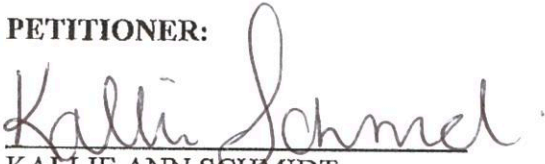
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Hep B vaccine caused Haylee to suffer anaphylaxis or contributed in any way to her death.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

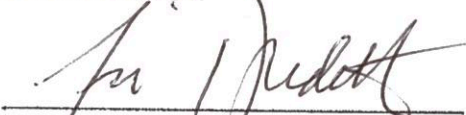
END OF STIPULATION

Respectfully submitted,


PETITIONER:


KALLIE ANN SCHMIDT

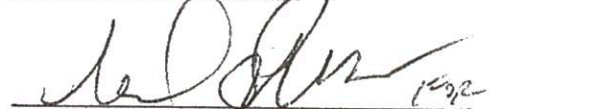
**ATTORNEY OF RECORD FOR
PETITIONER:**


DOUGLAS LEE BURDETTE, ESQ.
BURKETT & BURDETTE
1325 4th Avenue, Suite 1700
Seattle, WA 98101-2528
Tel: (206) 441-5597


**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


VINCENT J. MATANOSKI
Deputy Director
Torts Branch
Civil Division
U. S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

**AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:**


A. MELISSA HOUSTON, M.D., M.P.H, FAAP
Director, Division of
Injury Compensation Programs (DICP)
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


GLENN A. MACLEOD
Senior Trial Counsel
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 616-4122

Dated: 7/6/15